

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
. .
W.R. GRACE & CO., .
et al., . USX Tower - 54th Floor
. 600 Grant Street
. Pittsburgh, PA 15219
Debtors. .
. September 29, 2009
. 10:33 a.m.

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE COURT: -- W.R. Grace, 01-1139. Mona, can you
2 read the participant list?

3 MS. BAKER: Yes, Judge. There are about six pages of
4 participants.

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4 Theodore Tacconelli, Rita Tobin, David Turetsky, Edward
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6 Rebecca Zubaty. And that's the list.

7 THE COURT: All right, thank you. I'm not sure, Ms.
8 Baer, do you want to start?

9 MS. BAER: Yes, Your Honor, thank you. Your Honor, I
10 think it's a pretty quick agenda today.

11 Item Number 1 is the continued Massachusetts tax
12 claim. That matter is still working its way through the tax
13 system and so it's to be continued until October 26.

14 Item Number 2 is the debtors' omnibus objection. We
15 still have a few objections left, one of which is related to
16 Item Number 4. Those matters are also still being worked
17 through and it's being continued to October 26th.

18 Item Number 3, Your Honor, is the debtors' objection
19 to Maryland Casualty Company's proof of claim. By agreement of
20 the parties, that matter is being continued until November
21 23rd.

22 Item Number 4, Your Honor, is Gloria Munoz's motion
23 to lift the stay. The Munoz claim is one of the claims
24 objected to in Item Number 2. By agreement of the parties, the
25 response due on that matter is due now on October 9th and the

1 matter is to be set for hearing on October 26th, at the omnibus
2 hearing.

3 Your Honor, Item Number 5 is the quarterly fee
4 application. I understand that a certificate of no objection
5 was filed, along with the appropriate charts and I believe the
6 Court has already entered that order.

7 THE COURT: Yes. Anybody who is on the line only for
8 the purpose of fee applications, does anyone wish to be heard?

9 (No audible response)

10 THE COURT: All right. Then if that's all you -- the
11 only business you have before the Court, you're excused if you
12 wish to disconnect. Go ahead, Ms. Baer.

13 MS. BAER: Thank you, Your Honor. Item Number 6 on
14 the agenda, Your Honor, was General Insurance Company's motion
15 to file a late proof of claim.

16 Your Honor, just subsequent to the filing of that
17 motion, the parties entered into a settlement agreement
18 resolving certain issues with respect to the General Insurance
19 Company insurance matters.

20 I believe that under those circumstances, it should
21 moot the motion, although I haven't had an opportunity to talk
22 with Mr. Millner to know whether or not he was in agreement
23 with that. I'm not sure if he's on the line today.

24 MR. MILLNER: I am on the line and may I be heard?
25 This will take just a minute, Your Honor. It's Robert Millner.

1 THE COURT: Yes, sir.

2 MR. MILLNER: The stipulation technically does not
3 moot the motion. What the stipulation says, in substance, is
4 that General Insurance, upon approval of the stipulation,
5 would, in essence, and certain changes being made to the plan
6 have been proposed, would not pursue certain claims, but the
7 principal claim, which is an indemnity claim, according to the
8 stipulation, that claim will be waived --

9 THE COURT: Mr. Millner, I'm sorry, I'm having
10 trouble hearing you. Are you on a speaker phone?

11 MR. MILLNER: Oh, I'm sorry, I was on a speaker, I
12 apologize, Your Honor.

13 THE COURT: Please everyone, you know better than
14 that. Go ahead, Mr. Millner.

15 MR. MILLNER: I'm sorry, I do know better than that,
16 and I'm sorry.

17 What the -- the motion is not mooted. What the
18 stipulation we entered into did, was to say that upon certain
19 changes being made to the plan and approval of the stipulation
20 and the stipulation has been approved, the changes have been
21 proposed, we would waive, General Insurance, would waive
22 certain claims, but the principle claims of General Insurance
23 are actually indemnity claims under a certain provision of a
24 prepetition settlement agreement, and what the stipulation says
25 is that those claims will be waived upon entry of the

1 confirmation order, a final confirmation order with the 524(g)
2 protection for General Insurance.

3 So, what I think should happen here, Your Honor, is
4 that the motion should be granted, we should file that claim
5 and under the stipulation, if and when this Court and the
6 district court enters the final orders approving a plan with
7 the 524(g), giving us that protection, the claim will then be
8 waived.

9 THE COURT: All right, Ms. Baer.

10 MS. BAER: Your Honor, it seems to me that, and,
11 again, we have not been able to connect as the stipulation was
12 going forward --

13 MR. MILLNER: Yes.

14 MS. BAER: -- it seems to me that, frankly, what a
15 better approach may be, is for the motion to be withdrawn
16 without prejudice and then and only if the confirmation order
17 is not entered and becomes final, therefore, making this
18 unnecessary, Mr. Millner would then have the opportunity to
19 re-raise this motion and we would not object in terms of, you
20 know, the time that's passed since then. That way I think we
21 could get it off calendar and not have an unnecessary motion
22 entered, allowing a claim that then is going to go away, upon
23 confirmation.

24 THE COURT: Mr. Millner?

25 MR. MILLNER: Your Honor, the motion doesn't seek to

1 allow the claim, it seeks to file the claim for the simple
2 reason that my client was not given notice of the bar date and
3 under the form of the stipulation that we entered into, what
4 the stipulation says in Paragraph 9 is that effective upon
5 order issuing the Asbestos PI channeling injunction as to
6 General becoming a final order, General shall automatically and
7 without further action, be deemed to have released and waived
8 all indemnity claims as to Grace and the Asbestos PI Trust and
9 shall not assert any such claim against any of the debtors, the
10 reorganized debtors or the Asbestos PI Trust, the concept being
11 that the injunction, the 524(g) injunction, Your Honor, in
12 essence, stands in place of the indemnity rights.

13 So, my thought on this is that the motion, which is
14 not objected to, should be granted and under the terms of the
15 stipulation which Your Honor approved, if the 524(g) injunction
16 is entered, the claim automatically then goes away. That's
17 literally how the stipulation is written.

18 THE COURT: Well, I'm not aware that anybody did file
19 an objection, but I'm not sure that I got a CNO either.

20 MS. BAER: That's correct. We did not file a -- or a
21 CNO was not filed, Your Honor, and one of the reasons it was
22 not filed is because it was unclear to us procedurally what was
23 to next occur.

24 May I suggest, Your Honor, that we simply enter and
25 continue this motion until October 26th, so that the debtors

1 and the FCR and ACC, who are all parties to this transaction,
2 have the opportunity to talk and speak about the best
3 procedural way to deal with this?

4 THE COURT: Well, all right. I suppose that's fine.
5 By then we will have gotten through most of the plan
6 confirmation hearing, if not all of the plan confirmation
7 hearing in any event. So that may make matters a little more
8 clear.

9 MR. MILLNER: Yes, but I would also ask that Ms. Baer
10 speak -- it's Robert Millner again speaking, speak with me,
11 Your Honor, also.

12 THE COURT: Oh, sure.

13 MR. MILLNER: So, hopefully we have this ironed out
14 before the next hearing, which is when -- which is -- it's on
15 October 26?

16 MS. BAER: That's correct.

17 THE COURT: Yes, sir.

18 MR. MILLNER: Okay.

19 MS. BAER: Of course, Your Honor, that goes without
20 saying. We'd of course, speak to Mr. Millner.

21 THE COURT: All right, that's fine.

22 MS. BAER: Your Honor, agenda Item Number 7 is the
23 debtors' objection to the claim of Norfolk Southern Railway.

24 Your Honor, recently Norfolk Southern filed their
25 response and suggested that, perhaps, discovery needs to occur

1 here. Your Honor, we have looked at that, we've also talked
2 briefly with Norfolk Southern's counsel about whether or not we
3 should proceed to discovery, whether or not this is a potential
4 where we should simply sit down and talk, perhaps, even think
5 about sending it to ADR.

6 Under these circumstances, Your Honor, what we'd like
7 to do is have this motion continued or this objection continued
8 until October 26th, so we now have the opportunity to speak
9 with Norfolk Southern, now that we have seen their response, we
10 have seen some of the documents attached to it and figure out
11 the best, right next step and then come back to Your Honor on
12 October 26th, with a plan as to how we wish to proceed.

13 THE COURT: All right. Is anyone on the phone for
14 Norfolk?

15 MS. WOLFE: Your Honor, Etta Wolfe with Potter,
16 Anderson and Corroon. I'm sitting in for David Baldwin on this
17 matter.

18 THE COURT: All right.

19 MS. WOLFE: And Ms. Baer has set forth what we would
20 agree to as well.

21 THE COURT: Okay. This is also continued, then, till
22 October 26th. Give me a second, Ms. Baer.

23 MS. BAER: Sure.

24 THE COURT: Okay, that's fine, thank you.

25 MS. WOLFE: Thank you, Your Honor.

1 MS. BAER: Thank you. Your Honor, agenda Item Number
2 8 is the debtors' 27th omnibus objection to claims. A
3 certificate of no objections was filed with respect to those
4 objections and Your Honor has, I believe, already entered the
5 order allowing the disallowance of the claims as provided for
6 in the objection.

7 THE COURT: Yes.

8 MS. BAER: Your Honor, agenda Item Number 9 is the
9 Fireman's Fund motion to lift stay. By agreement of the
10 parties, that matter is being continued until October 26th.

11 THE COURT: All right.

12 MS. BAER: And then the final item, Your Honor, on
13 the agenda is simply a status with respect to where we are on
14 confirmation related issues. I believe that Mr. Bernick is on
15 the phone and would like to address that matter.

16 THE COURT: Mr. Bernick?

17 MR. BERNICK: Yes, good morning, Your Honor. I think
18 that rather than go through the list of all that's been
19 processed, what I'll say is that I'm not aware of any problems
20 or issues that we're facing at this point going forward. I
21 think everything is in process. A lot of the things that are
22 taking place just to make sure that the record is complete,
23 pursuant to the procedures that we've previously described for
24 the Court.

25 The only thing that I'm aware of that may or may not

1 require Your Honor's intervention before the 13th of October,
2 relates to the possible testimony of witnesses that might be
3 called by Anderson Memorial in connection with the rest of the
4 confirmation hearing.

5 At various times we've heard that as many as four
6 different witnesses might be called on the eve of the -- or
7 towards the conclusion of the trial that was -- that's been
8 completed so far. The anticipation was that two of those
9 witnesses would be called, but we communicated with Mr.
10 Speights and we do not have confirmation of whether they intend
11 actually to call any of those four people.

12 If they do, at least one of them might require a
13 telephonic hearing before the 13th, in order to determine
14 whether it's appropriate to call that witness, that is Mr.
15 Ewing, who is an expert, but doesn't have an expert report.

16 We've reached out to Mr. Speights by e-mail, we've
17 not received any kind of response, so I guess the question on
18 the table is whether Anderson Memorial does, in fact, intend to
19 call any live witnesses to testify at the -- towards the
20 conclusion of the confirmation hearing.

21 THE COURT: Mr. Speights?

22 MR. SPEIGHTS: Thank you, Your Honor, and I was going
23 to bring up a matter, too, and that's a good segue into what I
24 need to discuss with the Court and directly impacts Mr.
25 Bernick's question.

1 On August 28th, we filed a motion to compel regarding
2 the depositions of three witnesses, Mr. Shelnitz, Mr. LaForce
3 and Ms. Zilly. The debtors instructed those witnesses not to
4 answer a number of questions and that is the subject of the
5 motion to compel and that's 23028. At the same time we filed a
6 motion to expedite, 23032, and a request to file a reply
7 because our view was that the burden of proof was on the
8 debtors with regard to their instructions and we certainly
9 wanted to set forth all of our reasons for pursuing these
10 deposition questions.

11 In addition, our local counsel followed up, as I
12 understand the procedure is, with a telephone call to chambers.
13 As we have explained a number of times, we are hamstrung until
14 we can complete these depositions, especially the deposition of
15 Mr. Shelnitz, which will impact what testimony we will want to
16 present at the confirmation hearing.

17 I understand that this matter is not set for today,
18 in fact, Your Honor, the debtors did not even list our motion
19 to compel on its confirmation agenda, although it listed other
20 discovery issues that would be decided during the confirmation
21 process.

22 We would request two things today, without in any
23 way, getting into the merits. Number one, we would like to go
24 ahead and file our reply, our proposed reply. If Your Honor
25 decides not to consider it, we understand that, but we would at

1 least like to get it on the record and we could file that reply
2 today, with Your Honor's permission. We have not done so
3 because we understand under the rules we need Your Honor's
4 permission to file a reply. And, again, we're not trying to
5 argue the reply today, and Your Honor can decide at the
6 appropriate time whether to permit the reply to be filed, on
7 the merits, as opposed to just giving us the right to go ahead
8 and get it on the record. And number two, Your Honor, we would
9 respectfully request a hearing on our motion to compel.

10 Once that matter is resolved, we can advise the Court
11 and parties more fully as to who we intend to call, although I
12 might point out that the debtors have not rested with respect
13 to their proof on Anderson's issues, they have the burden of
14 proof and we certainly can't make a final decision until the
15 debtors rest or, perhaps, it would facilitate matters if the
16 debtors would tell us as well who they plan to call on
17 Anderson's issues because we might be able to make a more
18 definitive decision in light of that.

19 But, again, the big deal, Your Honor, is that I've
20 been trying to take Mr. Shelnitz's deposition, especially since
21 May when I first noticed it and it was severely curtailed by
22 the debtors. They think they're right, I think they're wrong,
23 we just need to get that teed up and resolved.

24 THE COURT: All right. Mr. Bernick?

25 MR. BERNICK: Yes. I guess there are a couple things

1 that are swirling around here. First, with respect to the
2 issue of the motion to compel, this is a direct emanation from
3 the hearing that already took place with respect to these
4 matters, where the Court set guidelines about what could and
5 could not be pursued at the depositions. You'll remember that
6 the scope of those depositions was already discussed before the
7 Court, the Court gave guidance and we followed that guidance.

8 So, the depositions did take place, witnesses were
9 instructed not to answer questions concerning the content of
10 the negotiation process or anything that would reveal
11 settlement strategies. Mr. Speights wasn't happy with how that
12 turned out, so he filed a motion and I know that Your Honor
13 will consider that motion. So, it really -- for issue one is,
14 when should that be done.

15 Issue two, however, is the logistics of completing
16 the confirmation hearing. And while Mr. Speights indicates
17 that he can't really make a determination about what he wants
18 to do, I think that the entire process that we've been
19 following here says that that's wrong, that people are required
20 to identify people that they're going to call and everybody has
21 actually cooperated very, very significantly in making that
22 happen, so we have two intertwining issues.

23 What I would suggest is that to the extent that Mr.
24 Speights wants to have his reply brief considered, in service
25 of getting this done, we have no objection to their filing a

1 reply brief. That number two, in connection with or pursuant
2 to the same basic approach, if Mr. Speights wants to have this
3 matter heard, that we have no objection to having it heard,
4 indeed, having it heard prior to the time that matters resume
5 on the 13th of October, although that, obviously, is completely
6 subject to Your Honor's schedule. And, so, we're comfortable
7 with that as well.

8 To the extent that we have remaining ambiguity on who
9 it is that Mr. Speights, on behalf of Anderson Memorial, is
10 going to call and how we're going to get to the end of the
11 confirmation, Mr. Speights indicated originally that he had
12 four witnesses that he might call. We were at pains to try to
13 figure out whether any of them were actually showing up live.
14 The last time around it turns out that two of them didn't even
15 know that they had been listed and one of them plainly
16 indicated that he was not going to be available, that was Mr.
17 Hilton.

18 And so, I think we're still dealing with either Mr.
19 Ewing or Mr. Solomon [sic], or both. Now, we have issues about
20 Mr. Solomon's appearance, but they don't require some hearing
21 in advanced. If Mr. Speights wants to bring him, we'll take it
22 up at the time. But Mr. Ewing is an expert and his appearance
23 would entail a fairly significant development, potentially.
24 I'm not even sure what the guy is going to say, he's an expert
25 who's testified about property damage litigation. We've not

1 received confirmation that Mr. Ewing is, in fact, going to
2 appear, there's no reason why we can't know that now, we are
3 almost at the conclusion of the confirmation case, we've
4 already had people talk about the property damage issues and I
5 don't think we're anticipating calling anybody else to talk
6 about Anderson Memorial. The only potential exception to that
7 is Mr. Finke, and I don't believe that Mr. Finke will, in fact,
8 be addressing Anderson Memorial at all.

9 So, this is all a question of finally getting a
10 definitive answer from Mr. Speights on who he is going to call
11 and on what subjects and then if we know that, we can then
12 raise the question that does have to be addressed at the
13 conclusion of Mr. Ewing.

14 So, wrapping all of this together, we're amenable to
15 having their motion heard, subject to the Court's schedule,
16 after filing of the reply brief and before the 13th of October.

17 Mr. Speights, I believe, should tell us now whether
18 he intends to call Mr. Ewing, Mr. Solomon or anybody else and
19 if it's Mr. Ewing, then I think at the same time that we have a
20 telephonic hearing, perhaps, with respect to their motion to
21 compel, Your Honor can take up the question at the same
22 telephonic conference of whether it's appropriate to call Mr.
23 Ewing and we can get this whole thing resolved.

24 THE COURT: Okay. Mr. Speights, are you planning to
25 call an expert who hasn't filed a report?

1 MR. SPEIGHTS: Your Honor, with respect to Mr. Ewing,
2 Mr. Ewing is a potential feasibility expert, however, we have
3 not been able to get the depositions completed of Ms. Zilly and
4 Mr. LaForce, which are subject to the same motion, nor have we
5 gotten the deposition completed of Mr. Shelnitz who has
6 feasibility information. So, I cannot make a decision until I
7 complete those depositions.

8 Now, I understand that if you rule with me, or
9 against me, Mr. Bernick is going to take the position that it's
10 too late and Mr. Ewing cannot testify, but I think we need to
11 get the depositions completed. And, Your Honor, this is not
12 anything new, I've been saying this, certainly at the hearing
13 on July 27, and probably before, trying to get the information
14 through our discovery process.

15 Let me back up and correct one thing, just because I
16 don't want it uncorrected for the record. With respect to Mr.
17 Hilton, Mr. Hilton was listed, but after a conversation with
18 Mr. Hilton, getting permission, Mr. Hilton, I informed them at
19 the confirmation hearing, would not be testifying and the
20 reason is very simple. Your Honor ruled already on the Celotex
21 bankruptcy issue when I tried to get that matter introduced
22 through my cross examination of Mr. Inselbuch, so there's no
23 reason to call Mr. Hilton from Texas to offer testimony that
24 Your Honor has already ruled is irrelevant to the confirmation
25 proceeding.

1 Your Honor, I'm glad Mr. Bernick has agreed we can
2 file our reply, we'll file it today and, perhaps, if we can get
3 -- and we very much want a hearing as soon as possible, after
4 Your Honor has had an opportunity to review the brief, because
5 I don't know what position I'm going to be in about who I want
6 to call or what other discovery I might need and I can imagine
7 Mr. Bernick screaming if I say, well, in light of Mr.
8 Shelnitz's testimony I need something else, I just can't make
9 those decisions until I complete the depositions.

10 Your Honor, we not only need a hearing, but if Your
11 Honor agrees with us, that we're entitled to ask Mr. Shelnitz,
12 Ms. Zilly and Mr. LaForce additional questions, then we need to
13 schedule those and we need to do so before the completion of
14 the confirmation hearing because we need to be prepared to
15 cross examine Ms. Zilly at trial and we need to be prepared to
16 introduce whatever it is that we learn from those other
17 deponents at the confirmation hearing.

18 THE COURT: Okay. Well, what are the -- I haven't
19 seen the motion, Mr. Speights, what's the nature of the motion
20 to compel? If it relates to settlement discussions, then
21 that's not calculated to lead to relevant or admissible
22 evidence and the discussions themselves can't come in, so I'm
23 not clear if that's what it's about, why I need a hearing. I
24 thought I had addressed that issue earlier.

25 MR. SPEIGHTS: Well, Your Honor, respectfully, number

1 one is, I don't think Your Honor made any decision on a motion
2 that they withdrew. We had a discussion on the -- at the July
3 hearing and no decisions were made and no ruling was made, in
4 my view. That will be subject of the reply brief that we file
5 today.

6 Secondly, Your Honor, I believe the debtor itself has
7 put into issue in this hearing its good faith and its own
8 representations that the plan was proposed after arms length
9 negotiation; thirdly, I think there has been a clear waiver of
10 any settlement negotiation and, fourth, Your Honor, I don't
11 know why I'm even addressing the merits because at such time as
12 we will have the merits heard, Mr. Rosendorf is arguing the
13 matter and I was only here as the process person, to try to get
14 the matter set for a hearing, so I would respectfully request,
15 if you consider the reply brief and the other briefs on it,
16 because I don't think it is as clear cut as Mr. Bernick says,
17 that we can't go into any of this, but regardless, we just need
18 a decision so we can decide which way to go.

19 THE COURT: All right.

20 MR. BERNICK: Your Honor, if I could just, again, try
21 to bring this to resolution and I won't go back to the hearing
22 where Your Honor said all the things that you said, whether
23 that was a ruling or not, but Your Honor can take that up,
24 we're just trying to get to a conclusion here on the
25 confirmation hearing. And it sounds like Mr. Speights is now

1 saying that because of this discovery issue, that he can't even
2 figure out how he is going to conclude his evidence with
3 respect to the confirmation hearing, which has been set to
4 conclude on the 13th and 14th, of October. And that is
5 completely contrary to how this whole thing has been set up and
6 there's no predicate for it and that's the thing of greatest
7 urgency to us, is that it's tremendously expensive to have this
8 process continue and it's tremendously disruptive to have it
9 continue when everybody else has tried to figure out how to
10 make this thing come to an end and it is about ready to end. I
11 hear Mr. Speights saying, he wants, after all, settlement
12 discussion information.

13 If he wants settlement discussion information,
14 they've asked for it in this motion, Your Honor can consider
15 whether there's a justification for it. I don't hear anything
16 about why Mr. Ewing's testimony would be implicated by
17 settlement discussions.

18 If there's some other things that Mr. Ewing is going
19 to address concerning feasibility, which is what Mr. Speights
20 indicates is the prompt for Mr. Ewing's testimony, there should
21 have been an expert report from Mr. Ewing, he should have
22 addressed feasibility, there should have been some, a long ago
23 prior disclosure with respect to Mr. Ewing who, after all, is
24 not a financial expert at all, he is an asbestos dust and, you
25 know, release expert, who testified in property damage cases.

1 But it seems -- so I fundamentally think that that is
2 completely different, but I know that Mr. Speights will
3 respond, oh, no, it's all still tied up and still the same.

4 The fact of the matter is, Mr. Ewing has never filed
5 an expert report, period. That's part of the reason nobody
6 really knows exactly what he's going to say and nobody can
7 really scrutinize Mr. Speights' assertion that it's necessary
8 that he testify at all. But if Mr. Speights is not willing to
9 say that he's going to call him, and that he needs more time
10 to figure it out, then I think we've got no choice but to tee
11 up the matter, whether he should be able to call Mr. Ewing at
12 all, because he's not issued an expert report.

13 So, I think that there are really two things here.
14 One, is that Mr. Speights is, in fact, out of time to identify
15 any new witnesses of any kind at all. I just think that that
16 is -- there's no justification for it and it's incredibly
17 disruptive.

18 To the extent that he won't withdraw his proposal to
19 call Mr. Ewing on some theory, whatever, let's have the Ewing
20 issue heard because it doesn't really turn on the relevance of
21 Mr. Ewing's testimony, it turns on the fact that he's an expert
22 and he has no expert report.

23 So, it seems to me that either way, the simplest way
24 to bring all of this to a conclusion, is to have Mr. Speights'
25 motion heard and at the same time have the Court determine

1 whether and, we'll make the motion, to preclude Mr. Speights
2 from calling Ewing because he is an expert without a report.

3 If Your Honor can figure out a way to squeeze in a
4 little bit of time before the 13th, I'm confident both matters
5 can be resolved and then we'll be able to go forward knowing
6 whether or not Mr. Ewing can testify, Mr. Speights can know
7 whether or not he can get this additional information and we'll
8 deal with the logistics of how to get that done, so that we
9 finish the confirmation hearing on October the 13th.

10 I'll let the Court know that, you know, we're very
11 close to being done. We have the completion of Ms. Zilly's
12 testimony, we have what we hope to be a stipulated submission
13 by Mr. Finke, we're working on that but if we can't get the
14 stipulation, we'll call him. It'll be on very focused
15 technical confirmation issues. And we have Ms. Martin, who has
16 got a feasibility -- a piece of the feasibility equation and
17 beyond that, I don't think we have any more witnesses. We're
18 anticipating that it's going to be a very short continuation of
19 the evidence and we'll be done.

20 THE COURT: Okay. Mona, I'm not sure what next
21 week's schedule looks like. The debtor is going to have to
22 file some motion and I'm going to need to get a response from
23 Mr. Speights, so I guess I need an argument date next week, if
24 that's possible.

25 MS. BAKER: Monday is out, Tuesday is a 13 day.

1 THE COURT: What does the afternoon of Tuesday look
2 like, Mona?

3 MS. BAKER: Hold on one second. There are hearings
4 scheduled starting as late as 2:30, and it's the Dielectric --

5 THE COURT: Oh. Can you ask Claire -- could you just
6 leave the courtroom for a minute and ask Claire whether that
7 Dielectric case is actually going forward? I sent her an
8 e-mail yesterday, but my e-mail is not working today. I'm not
9 getting any responses, so I don't know.

10 MS. BAKER: She's not in. I can call her at home and
11 find out. Do you want me to do that now?

12 THE COURT: Hello?

13 MS. BAKER: Judge, she's not in right now.

14 THE COURT: Mona, I can't hear you.

15 MS. BAKER: Can you hear me now?

16 UNIDENTIFIED FEMALE SPEAKER: It's on, okay, okay,
17 it's all right. Try it.

18 MS. BAKER: Can you hear me now?

19 THE COURT: Yes.

20 MS. BAKER: Something happened to the mic. Claire is
21 not in at the moment, I can call her at home if you'd like.

22 THE COURT: No, okay. Just look -- what other days
23 -- what else is going on for the rest of the week?

24 MS. BAKER: Possibly Wednesday. But everything from
25 Wednesday was rescheduled, and I'm trying to figure out why.

1 Something can be scheduled I think, I think it can be scheduled
2 at noon on Wednesday the 7th.

3 THE COURT: What's in the morning?

4 MS. BAKER: It's hard to -- hold on a second. You're
5 not available before 11:30 in the morning.

6 THE COURT: Okay.

7 MS. BAKER: There were hearings starting 11:30, but
8 they were moved to a different date; 12:30, there's a meeting.
9 No, Wednesday is not going to work, because then at one o'clock
10 there's Pittsburgh Corning.

11 MR. BERNICK: What about the 11:30 and it's probably
12 --

13 MS. BAKER: Well, I looked at the calendar in more
14 detail, it's not available. And on Thursday, there's the
15 Virgin Islands matter and then there's your class in the
16 afternoon.

17 THE COURT: Virgin Islands, that's Prosser?

18 MS. BAKER: Yes.

19 THE COURT: Oh.

20 MS. BAKER: But you have a guest lecturer for your
21 class, so I'm not sure if you are going to be there or not.

22 THE COURT: No, I won't be, but Prosser is a very
23 long agenda. I just got the agenda, it's huge.

24 MS. BAKER: And then the Friday, there's the PBI
25 seminar.

1 THE COURT: Okay, go back to Wednesday. Is there
2 anything in NARCO and GIT in the afternoon, or is it only
3 Pittsburgh Corning?

4 Mr. Restivo, are you on the line?

5 MR. BAKER: Pittsburgh Corning is at one o'clock.

6 THE COURT: I guess Mr. Restivo is not on.

7 MR. LOCKWOOD: Judge, NARCO and GIT have been
8 canceled, Your Honor.

9 THE COURT: They have, okay.

10 MR. LOCKWOOD: Yes.

11 THE COURT: Mr. Lockwood, I haven't seen a Pittsburgh
12 Corning agenda, is it awful?

13 MR. LOCKWOOD: I don't think so. I haven't seen one
14 either, but I'm not aware of anything substantial that's likely
15 to be on it. I'm sitting here trying to think of whether
16 there's any pending motions. Mostly what's going on is
17 discovery. I don't think there's been any discovery motions
18 filed. So, I really can't be sure, but I'd be real surprised
19 if the Pittsburgh Corning hearing took more than an hour or
20 two, on the basis of what I know now.

21 THE COURT: Well, I think I'll go out on a limb and

22 --

23 MR. LOCKWOOD: And that's set --

24 THE COURT: I'm sorry.

25 MR. LOCKWOOD: And that's set for one.

1 THE COURT: Okay. I think I'll go out on a limb and
2 say that we could do this argument at three on that Wednesday
3 afternoon, because if NARCO and GIT are canceled, I really am
4 not aware that anything is scheduled in Pittsburgh Corning, I
5 haven't seen a preliminary agenda even. So, I think if we set
6 three o'clock, that would be safe.

7 MR. LOCKWOOD: That would be my belief, Your Honor,
8 picking the next --

9 THE COURT: All right. Wednesday, then at 3 p.m.,
10 and we can do it by phone.

11 MR. BERNICK: Yes, that's fine with the debtors.

12 THE COURT: Mr. Speights?

13 MR. SPEIGHTS: That's fine Your Honor. Just in case
14 that turns out to be a problem, I'm available any day this week
15 or next week, except next Monday, I'm in court.

16 MS. BAKER: Judge, this is Mona. I'm going to need
17 some more information as to what Mr. Speights' motion,
18 etcetera, is, because we don't have any e-mails concerning a
19 motion to shorten or anything like that. So, if he could
20 either call later or if he has the information now.

21 MR. SPEIGHTS: I have the two docket numbers.

22 MS. BAKER: That would help.

23 MR. SPEIGHTS: 23028 and 23032.

24 MS. BAKER: Oh, you did say that. Okay, thank you
25 very much.

1 THE COURT: All right, and --

2 MR. BERNICK: And, I'm also advised -- I'm sorry,
3 Your Honor, you're probably going to want to know about our
4 motion on Ewing. Our motion on Ewing, Ms. Esayian tells me,
5 already has been filed.

6 THE COURT: Oh.

7 MR. BERNICK: And, Lisa, are you on the line, do you
8 know what the docket number is? I don't hear from Lisa. She's
9 still on mute. But we'll figure out what that is, but I'm told
10 by e-mail that she -- by her, that there is a motion on file.

11 THE COURT: Okay. Let me find out from the court
12 call operator, whether she's on the line.

13 UNIDENTIFIED FEMALE SPEAKER: Which Lisa, Lisa who,
14 please?

15 MS. BAER: Esayian.

16 UNIDENTIFIED FEMALE SPEAKER: She is on the line and
17 I did bring her line live, she did not respond.

18 THE COURT: Oh, okay.

19 MS. ESAYIAN: I'm sorry, I thought I had a listen
20 only line. I apologize, Your Honor.

21 THE COURT: Okay. Ms. Esayian, do you know the
22 docket number?

23 MS. ESAYIAN: I don't Your Honor, but it was filed on
24 September 16th, in the morning, if that helps.

25 MS. BAKER: Judge, I'm calling up the docket --

1 MR. BERNICK: We can get that to the Court.

2 THE COURT: That's what I was going to say, if
3 somebody could call my chambers -- has a response been filed,
4 too?

5 MS. ESAYIAN: No.

6 MR. BERNICK: No, Your Honor.

7 THE COURT: Mr. Speights, have you received the
8 motion?

9 MR. SPEIGHTS: We have -- I believe we received it
10 during the confirmation hearing. But in any event, we have
11 received it and we can file a response.

12 THE COURT: Okay. When?

13 MR. SPEIGHTS: Friday.

14 MS. BAKER: Judge, I think the docket number of the
15 Ewing motion is 23259.

16 THE COURT: Okay. Mr. Speights, can you file it by
17 noon on Friday?

18 MR. SPEIGHTS: Noon on Friday, yes.

19 THE COURT: Yes. All right. And then we can do the
20 argument on both matters, Mr. Speights' motion to compel and
21 whatever -- what is the motion regarding Mr. Ewing called?

22 MS. BAKER: It's the debtors' motion in limine to
23 preclude the testimony of Anderson Memorial's witness, William
24 M. Ewing.

25 THE COURT: Okay. We'll do both of those arguments

1 then on -- next Wednesday, a week from -- what day is today,
2 Tuesday, a week from tomorrow, at 3 p.m., and it will all be by
3 phone. So, we will arrange the court call proceeding, but all
4 of you who are interested in participating will need to make
5 the customary arrangements to dial in.

6 MR. SPEIGHTS: Thanks, Your Honor.

7 MR. BERNICK: We really appreciate your making the
8 time in your schedule, Your Honor.

9 THE COURT: Okay. Is that everything with respect to
10 the confirmation status?

11 MR. BERNICK: I don't believe the debtors have
12 anything else.

13 THE COURT: Anyone have any other matters? Anything
14 that's going to impact the confirmation hearing?

15 (No audible response)

16 THE COURT: Okay. I'm not hearing anything, so I
17 guess I'll speak with you next week, then, at three o'clock.

18 MR. BERNICK: Great.

19 THE COURT: All right, we're adjourned. Thank you.

20 MS. BAER: Thank you, Your Honor.

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C E R T I F I C A T I O N

I, ELAINE HOWELL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of my ability.

/s/ Elaine Howell

Date: October 5, 2009

ELAINE HOWELL

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